

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DERRICK T. TOLIVER,

Plaintiff,

v.

BRAD CAIN, et al.,

Defendants.

Case No. 2:21-cv-01232-JR

ORDER

SIMON, Judge

Plaintiff, an adult in custody at the Snake River Correctional Institution, brings this 42 U.S.C. § 1983 civil rights action *pro se*. On February 24, 2022, Magistrate Judge Jolie A. Russo issued an Order to Amend (ECF No. 6) finding that plaintiff's Complaint failed to state a claim for relief and was thereby subject to dismissal under 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Judge Russo ordered plaintiff to file an Amended Complaint within 30 days curing the deficiencies noted. Judge Russo advised Plaintiff that if he failed to file an Amended Complaint within the time provided this action would be dismissed. Plaintiff did not file an Amended Complaint and, on March 30, 2022, this court issued an Order and Judgment of dismissal.

On April 1, 2022, Plaintiff filed a motion for extension of time to file an Amended Complaint. On April 4, 2022, Judge Russo issued an order granting Plaintiff's motion and providing that upon receipt of Plaintiff's Amended Complaint, the court would review it pursuant to 28 U.S.C. § 1915(e)(2) and determine whether it cured the deficiencies noted as to plaintiff's original Complaint. Judge Russo's order also stated that the court would determine whether the March 30, 2022, Order and Judgment of dismissal should be withdrawn. Currently before the Court is plaintiff's Amended Complaint (ECF No. 11).

Plaintiff's Amended Complaint does not cure the deficiencies noted in Judge Russo's Order to Amend his original Complaint. Specifically, plaintiff does not allege facts sufficient to establish the deliberate indifference to his serious medical needs as required to state a claim of denial of his Eighth Amendment rights upon which relief may be granted under § 1983. *See Farmer v. Brennan*, 511 U.S. 825, 837, 842 (1994) (to state a claim under the Eighth Amendment, a plaintiff must plead facts to plausibly suggest that defendants exposed him to a substantial risk of serious harm and did so with deliberate indifference). Because plaintiff's Amended Complaint does not state a claim upon which relief may be granted, the Court declines to withdraw the Order and Judgment of dismissal.

### CONCLUSION

For these reasons, the March 30, 2022, Order and Judgment of dismissal will not be withdrawn. Because this action has been dismissed, the Court DENIES AS MOOT plaintiff's two Motions for Preliminary Injunction (ECF Nos. 12 and 14) which were filed after entry of the Order and Judgment.

DATED this 12th day of October, 2022.



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Michael H. Simon  
United States District Judge